

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Reexamination of Roaming Obligations)	WT Docket No. 05-265
of Commercial Mobile Radio Service)	
Providers)	
)	

To: The Commission

**COMMENTS OF
SOUTHERNLINC WIRELESS**

By:

Christine M. Gill
David D. Rines
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
T: 202.756.8000
F: 202.756.8087

Holly Henderson
External Affairs Manager
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, Georgia 30342
T: 687.443.1500

Michael D. Rosenthal
Director of Legal and External Affairs
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Attorneys for SouthernLINC Wireless

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EXECUTIVE SUMMARY

As the Commission is aware, SouthernLINC Wireless has experienced great difficulty over the years in its attempts to negotiate a roaming arrangement with Nextel (prior to its recent merger with Sprint) and its partially-owned affiliate Nextel Partners. To this day, SouthernLINC Wireless, virtually their only iDEN-based competitor in the United States, has no roaming agreement with Nextel Partners and only a limited, non-reciprocal arrangement with Sprint Nextel itself, for which SouthernLINC Wireless must pay rates that substantially exceed those typical in the industry. These practices demonstrate not only the existence of market failure in the provision and availability of roaming for iDEN carriers but also are indicative of both current and potential future market failure in the provision and availability of roaming for all wireless services, regardless of platform or technology.

According to Dr. R. Preston McAfee, Professor of Business, Economics and Management at the California Institute of Technology, a distinction must be made between the market for retail CMRS services, in which there is robust competition, and the market for wholesale CMRS services such as roaming, where monopoly and duopoly situations prevail and the conditions for market failure are established. As set forth in the attached Report by Dr. McAfee, distinct CMRS technologies, such as CDMA, GSM, and iDEN, compete head-on for retail consumers, whereas in wholesale markets these distinct technologies are not substitutes for each other, thus substantially limiting the options that CMRS carriers have for obtaining roaming services in a given geographic area. This relative lack of competition in the wholesale roaming market gives the large nationwide CMRS carriers the ability to unfairly leverage their nationwide coverage capabilities to the detriment of unaffiliated regional carriers through anticompetitive roaming prices and practices.

These practices not only harm regional and rural CMRS carriers, but they also cause direct harm to consumers by inhibiting competition, removing incentives for the development and deployment of innovative new services and technologies, and keeping roaming rates artificially high. More significantly, these practices harm consumers by restricting the availability of and access to mobile wireless communications services. As described in more detail in these comments, access to mobile wireless services confers significant benefits to both consumers and to the nation as a whole in areas ranging from the economy to public safety and national security. The importance of wireless communications has been graphically (and all too frequently) illustrated by large-scale emergencies – such as Hurricanes Katrina, Rita, and Wilma – where the availability of wireless communication meant the difference between life and death for many people. Given this significance, the availability of wireless communication is far too important to be left subject to the whim of market forces. Therefore, the Commission cannot ignore the failure of the market to make services such as automatic roaming available to all wireless consumers.

The existence of robust retail competition provides the Commission with a relatively simple and straightforward means of determining whether a carrier's roaming practices are reasonable or reflect an improper exercise of market power at the wholesale level. Specifically, the Commission should adopt the presumption that if a carrier charges wholesale roaming rates in a region that exceed its own lowest prevailing retail rates, these roaming rates would presumptively be considered unjust and unreasonable.

This underlying presumption based on wholesale and retail rates provides a simple, efficient, and effective mechanism for assessing, adjudicating, and remedying roaming issues and disputes. The Commission would be able to make a straightforward comparison using

publicly available retail price information, thus minimizing the need for or burdens of obtaining and analyzing confidential carrier cost information and eliminating the need to conduct complex cost analysis or studies.

With this presumption as a fair and efficient analytical tool, SouthernLINC Wireless urges the Commission to adopt the following three-prong approach to ensure the development and availability of automatic roaming services and to ensure that all U.S. consumers have equal access to wireless services:

- The Commission should adopt a rule requiring all CMRS carriers to provide automatic *inbound* roaming for all services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions.
- The Commission should modify its Section 208 complaint process and adopt appropriate evidentiary presumptions regarding claims made under Sections 201 and 202 that reflect the public interest need for roaming and the goals of the automatic roaming obligations, as well as appropriate procedures to ensure that its actions and decisions under this process are sufficiently timely to meet the demands of the fast-moving wireless market.
- The Commission should adopt appropriate measures for enforcing the automatic roaming obligations, including, but not limited to, forfeitures and enforceable orders compelling carriers to enter into and conduct good faith roaming negotiations.

These proposals, which are described in greater detail in Section IX of these comments, are designed to ensure the availability of automatic roaming services through the most efficient and least intrusive means possible and are premised on the basic dichotomy between wholesale and retail CMRS services described in the McAfee Report. SouthernLINC Wireless submits that these proposals strike an appropriate balance between the public interest need to ensure the availability of roaming for mobile wireless services while still providing carriers ample flexibility to make appropriate business decisions in a competitive market.

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COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits its comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding regarding the roaming obligations of commercial mobile radio service (CMRS) providers.¹

SouthernLINC Wireless is pleased that the Commission recognizes that, in light of significant changes in the CMRS industry, including industry consolidation and major shifts in the type and nature of CMRS services themselves, it has become necessary to revisit the current regulatory and market landscape for roaming services.

As a general matter, SouthernLINC Wireless believes that competitive markets, including the retail CMRS market, function most effectively when subject to minimal regulatory intervention. SouthernLINC Wireless would prefer to be able to address issues such as

¹ / *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Notice of Proposed Rulemaking, FCC 05-160 (rel. August 31, 2005) (“*NPRM*”).

automatic roaming through commercial negotiation between carriers and has been attempting to do just this for over ten years. But true commercial negotiation can only occur when all relevant aspects of the market are, in fact, competitive which, as discussed herein, is not the case with respect to automatic roaming.

In addition, SouthernLINC Wireless notes that wireless communication is not simply a consumer commodity such as paint or office supplies. Rather, wireless communication plays a vital role in consumer welfare, economic growth, public safety, and national security. These are the type of concerns that led to the creation of this Commission over seventy years ago in order to ensure that *all* Americans have ready access to the types of communications services that meet their various needs. The importance of wireless communications has been graphically (and all too frequently) illustrated by large-scale emergencies – such as Hurricanes Katrina, Rita, and Wilma – where the availability of wireless communication meant the difference between life and death for many people. Given this significance, the availability of wireless communication is far too important to be left subject to the whim of market forces. Therefore, the Commission cannot ignore the failure of the market to make services such as automatic roaming available to all wireless consumers. SouthernLINC Wireless urges the Commission to take immediate action to remedy this situation through the adoption of the automatic roaming obligations discussed herein.

Given this urgent need for action, SouthernLINC Wireless applauds the Commission's decision to adopt the current *NPRM* and looks forward to an outcome that will address the issue of automatic roaming in such a way as to protect and promote important public interest needs, such as consumer access to mobile wireless services and the development of a reliable nationwide communications infrastructure, while fostering fair competition and the continued

development of new, innovative, and competitive wireless communications services and technologies.

OVERVIEW:

SouthernLINC Wireless' Roaming Proposal is Pro-Competitive, In the Public Interest, Fair, and Easy to Administer and Enforce

As the Commission is aware, the availability of roaming is an issue of great importance for SouthernLINC Wireless, and SouthernLINC Wireless has long been an active participant in the Commission's roaming proceedings.² Most recently, SouthernLINC Wireless submitted comments and made *ex parte* presentations in the Commission's Sprint/Nextel merger review proceeding in which it emphasized roaming as an essential component of the wireless market.³

As set forth in detail in numerous submissions in various proceedings, SouthernLINC Wireless has experienced great difficulty over the years in its attempts to negotiate a roaming arrangement with Nextel (prior to its recent merger with Sprint) and its partially-owned affiliate Nextel Partners. To this day, SouthernLINC Wireless, virtually their only iDEN-based competitor in the United States, has no roaming agreement with Nextel Partners and only a limited, non-reciprocal arrangement with Sprint Nextel itself, for which SouthernLINC Wireless must pay rates that substantially exceed those typical in the industry. These practices demonstrate not only the existence of market failure in the provision and availability of roaming for iDEN carriers but also are indicative of both current and potential future market failure in the

² / See, e.g., Comments, Reply Comments, and *ex parte* filings made by SouthernLINC Wireless in the Commission's proceedings on *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, and *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193.

³ / *Applications of Nextel Communications, Inc. Transferor, and Sprint Corporation, Transferee, For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63 ("*Sprint/Nextel Merger Application*"), Comments of SouthernLINC Wireless (March 30, 2005). A copy of this filing is included as Attachment A to these comments.

provision and availability of roaming for all wireless services, regardless of platform or technology.

The basis of market failure in the provision of roaming services is explained by Dr. R. Preston McAfee, Professor of Business, Economics and Management at the California Institute of Technology, in his report provided herein as Attachment B.⁴ In his report, Dr. McAfee explains the difference between the market for retail CMRS services, in which there is robust competition, and the market for wholesale CMRS services such as roaming, where monopoly and duopoly situations prevail. According to Dr. McAfee, the main reason for this difference is that distinct CMRS technologies, such as CDMA, GSM, and iDEN, compete head-on for retail consumers, whereas in wholesale markets, these distinct technologies are not substitutes for each other, thus substantially limiting the options that CMRS carriers have for obtaining roaming services in a given geographic area. As explained in the McAfee Report, this relative lack of competition in the wholesale roaming market gives the large nationwide CMRS carriers the ability to unfairly leverage their nationwide coverage capabilities to the detriment of unaffiliated regional carriers through anticompetitive roaming prices and practices.

These practices not only harm regional and rural CMRS carriers, but they also cause direct harm to consumers by inhibiting competition, removing incentives for the development and deployment of innovative new services and technologies, and keeping roaming rates artificially high. More significantly, these practices harm consumers by restricting the availability of and access to mobile wireless communications services. As described in more detail in these comments, access to mobile wireless services confers significant benefits to both consumers and to the nation as a whole in areas ranging from the economy to public safety and

⁴ / Dr. R. Preston McAfee, "The Economics of Wholesale Roaming in CMRS Markets" ("McAfee Report"). A copy of this report is provided as Attachment B to these comments.

national security. The roles of the nationwide carriers on the one hand and of the regional carriers on the other in the establishment for “all the people of the United States” an efficient, nationwide communications service⁵ are, as discussed herein, distinct yet complementary and equally essential. However, these roles – as well as the resultant economic and public benefits – can only be fully realized if access to all mobile wireless services is available to all U.S. consumers through automatic roaming. Market forces alone have thus far failed to provide such access, and it is therefore necessary for the Commission to take action.

The existence of robust retail competition provides the Commission with a relatively simple and straightforward means of determining whether a carrier’s roaming practices are reasonable or reflect an improper exercise of market power at the wholesale level. As explained in the McAfee Report, prevailing retail rates in a competitive market are those that are voluntarily offered to the public and which implicitly cover both the costs of providing the service, as well as a reasonable profit for the carrier. The Commission should therefore adopt the presumption that if a carrier charges wholesale roaming rates in a region that exceed its own lowest prevailing retail rates, these roaming rates would presumptively be considered unjust and unreasonable and would thus violate Section 201 of the Act.

This underlying presumption based on wholesale and retail rates provides a simple, efficient, and effective mechanism for assessing, adjudicating, and remedying roaming issues and disputes. The Commission would be able to make a straightforward comparison using publicly available retail price information, thus minimizing the need for or burdens of obtaining and analyzing confidential carrier cost information and eliminating the need to conduct any complex cost analysis or studies.

⁵ / See 47 U.S.C. § 1.

With this presumption as a fair and efficient analytical tool, SouthernLINC Wireless urges the Commission to adopt the following three-prong approach to ensure the development and availability of automatic roaming services and to ensure that all U.S. consumers have equal access to wireless services:

- The Commission should adopt a rule requiring all CMRS carriers to provide automatic *inbound* roaming for all services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions.
- The Commission should modify its Section 208 complaint process and adopt appropriate evidentiary presumptions regarding claims made under Sections 201 and 202 that reflect the public interest need for roaming and the goals of the automatic roaming obligations, as well as appropriate procedures to ensure that its actions and decisions under this process are sufficiently timely to meet the demands of the fast-moving wireless market.
- The Commission should adopt appropriate measures for enforcing the automatic roaming obligations, including, but not limited to, forfeitures and enforceable orders compelling carriers to enter into and conduct good faith roaming negotiations.

These proposals, which are described and discussed in greater detail in Section IX of these comments, are designed to ensure the availability of automatic roaming services through the most efficient and least intrusive means possible and are premised on the basic dichotomy between wholesale and retail CMRS services described in the McAfee Report. SouthernLINC Wireless submits that these proposals strike an appropriate balance between the public interest need to ensure the availability of roaming for mobile wireless services while still providing carriers ample flexibility to make appropriate business decisions in a competitive market.

I. SOUTHERNLINC WIRELESS

SouthernLINC Wireless is a wholly owned subsidiary of Southern Company.

SouthernLINC Wireless operates a commercial digital 800 MHz ESMR system using Motorola's

proprietary Integrated Digital Enhanced Network (iDEN) technology to provide dispatch, interconnected voice, Internet access, and data transmission services over the same handset.

SouthernLINC Wireless provides these services to approximately 300,000 subscribers in a 127,000 square mile service territory covering Georgia, Alabama, southeastern Mississippi, and the panhandle of Florida. SouthernLINC Wireless offers the most comprehensive geographic coverage of any mobile wireless service provider in Alabama and Georgia, serving the extensive rural territory within its footprint as well as major metropolitan areas and highway corridors. Because of its expansive and reliable coverage within the region, SouthernLINC Wireless' service is widely used by local and statewide public safety agencies, school districts, rural local governments, public utilities, and emergency services such as ambulance companies. It is also utilized by commercial entities and other government entities in both urban and rural areas.

II. AN OVERVIEW OF ROAMING

The Commission has long recognized that roaming is a vital component of a competitive CMRS market and plays an essential role both in encouraging the development and deployment of advanced wireless services and in making these services available to as many U.S. consumers as possible. For example, the Commission determined in 1996 that roaming is "a critical element of CMRS service"⁶ and, as stated in the *NPRM*, concluded that "ubiquitous roaming on CMRS systems is important to the development of a seamless, nationwide 'network of networks'," a conclusion which the Commission later affirmed in 2000.⁷ The availability of

⁶ / *NPRM* at ¶ 21.

⁷ / *Id.* at ¶ 8 (internal citations omitted).

roaming has also been a significant component of the Commission's public interest analysis of the recent mergers between some of the nation's largest CMRS carriers.⁸

However, despite its acknowledgement of the significance of roaming to the CMRS market and to the interests of consumers, the Commission has taken no significant action on any roaming issue in nearly ten years, preferring instead to allow the availability of roaming – particularly automatic roaming – to be “regulated” by market forces. However, as discussed below in these comments, as well as in numerous filings made over the past ten years, SouthernLINC Wireless has experienced extensive and ongoing difficulties in its efforts to obtain roaming services for its customers, demonstrating that “market regulation” has not been sufficient in making roaming services available for consumers.

During this past decade, the CMRS market itself has developed and changed significantly, experiencing tremendous subscriber growth, significant shifts in the type and nature of mobile wireless services themselves (as data, PTT, and other wireless services have gained greater prominence), and industry consolidation and concentration. This latter trend shows no signs of abating⁹ and will only add to and exacerbate the existing failure of market forces to serve as an effective guarantor of roaming service for consumers. These factors underscore the need for Commission action to ensure the availability of roaming services to

⁸ / See, e.g., *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522 (2004) (“*Cingular/AT&T Merger Order*”); See also *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, FCC 05-148 (rel. August 8, 2005) (“*Sprint Nextel Merger Order*”); *Application of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138 (rel. July 19, 2005) (“*ALLTEL Merger Order*”).

⁹ / See, e.g., Jesse Drucker, *Alltel to Acquire Midwest Wireless for \$1.08 Billion*, Wall Street Journal, Nov. 18, 2005, at C.3; Arshad Mohammed, *Sprint Nextel Agrees to Buy Texas Affiliate*, Wash. Post, Nov. 22, 2005, at D04.

consumers and to promote the Commission's stated vision of a "seamless, nationwide 'network of networks'."

A. The Commission's Statutory Authority and Responsibility to Ensure the Availability of CMRS Roaming

The Commission determined nearly ten years ago that CMRS roaming is a common carrier service subject to the common carrier provisions of Title II of the Communications Act.¹⁰ As the Commission stated in the *NPRM*, the provisioning of roaming services by CMRS carriers is therefore subject to the prohibitions under Section 201 of the Act against unjust and unreasonable charges or practices, as well as to the nondiscrimination requirements of Section 202 of the Act, and complaints and enforcement actions regarding such roaming practices are thus covered by the complaint process set forth in Section 208 of the Act.¹¹ The Commission therefore has not only the statutory authority but also the statutory responsibility to ensure the availability of roaming under reasonable and nondiscriminatory rates, terms, and conditions.

However, as discussed in more detail below in these comments, the Section 208 complaint process is an inadequate remedy regarding roaming disputes, and without a mandatory requirement that a carrier provide automatic roaming, the uncertainty of pursuing a complaint under the current complaint process has presented a barrier to any enforcement action or other measures that would put a halt to unfair roaming practices. Therefore, the Commission must adopt additional measures, including an automatic roaming rule, to make the statutory mandates of Sections 201 and 202 meaningful and ensure the availability of roaming services for U.S. consumers.

¹⁰ / See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996) ("*1996 Order and Roaming NPRM*"); See also 47 U.S.C. §§ 201, 202, and 208.

¹¹ / *NPRM* at ¶¶ 2, 34.

B. The Commission's Regulatory Approach: Manual Roaming and Market Forces

In the *NPRM*, the Commission stated that, in 1996, it extended the manual roaming requirement to broadband PCS, SMR, and other CMRS services upon determining that “the availability of roaming on broadband wireless networks was important to the development of nationwide, ubiquitous, and competitive wireless voice communications.”¹² This action resulted in the adoption of the “manual roaming rule,” codified as Section 20.12 of the Commission’s Rules, 47 C.F.R. § 20.12(c).

Currently, Section 20.12(c) of the Commission’s Rules requires CMRS carriers to provide “mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.”¹³ When this rule was initially adopted, the Commission apparently intended that it require only the provision of manual roaming, but not automatic roaming. It is worth noting, though, that this limitation does not appear in the actual text of the rule itself.

In 1996, the Commission initiated the first of what was to become a series of requests for comment on whether to adopt a rule on the provision of automatic roaming services.¹⁴ This proceeding was followed by a new rulemaking proceeding in 2000 in which the Commission

¹² / *Id.* at ¶ 5.

¹³ / 47 C.F.R. § 20.12(c).

¹⁴ / *1996 Order and Roaming NPRM*, 11 FCC Rcd 9462.

again raised the issue of whether an automatic roaming rule should be adopted.¹⁵ However, the Commission declined to adopt such a rule, opting instead to leave the availability of automatic roaming as a matter to be determined through market competition.

According to the Commission, roaming rates and roaming revenues have declined as a result of competition in the CMRS market, and competitive market forces have made automatic roaming increasingly available.¹⁶ SouthernLINC Wireless has certainly not shared in this experience, and recent filings in the Commission's roaming and merger review dockets indicate that other carriers have increasingly lost out on this experience as well.¹⁷ Therefore, if the Commission is correct in its underlying assumption that market competition makes automatic roaming readily available, then a carrier's refusal to provide such roaming for all wireless services – or to even provide roaming at all – must mean that the level of true market competition is insufficient (*i.e.*, there is market failure) or that the carrier is engaging in anticompetitive conduct. Given that such practices are in fact occurring, market forces are clearly not sufficient to ensure the availability of CMRS roaming, thus underscoring the need for Commission action.

III. SOUTHERNLINC WIRELESS' EFFORTS TO OBTAIN REASONABLE ROAMING ARRANGEMENTS

SouthernLINC Wireless faces particular challenges with respect to roaming due to its use of Motorola's proprietary Integrated Digital Enhanced Network (iDEN) technology and air interface platform. This technology enables SouthernLINC Wireless to provide reliable, high-

¹⁵ / *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, Notice of Proposed Rulemaking, 15 FCC Rcd 21628 (2000) ("*2000 CMRS Roaming NPRM*").

¹⁶ / *See, e.g., Cingular/AT&T Merger Order*, 19 FCC Rcd at 21588 – 21589 ¶¶ 173 – 174.

¹⁷ / *See, e.g., Leap Wireless International, Inc. (Leap Wireless)*, WT Docket No. 00-193, *Ex Parte*, filed July 12, 2005; *See also Leap Wireless Ex Parte*, filed August 17, 2005.

quality advanced wireless services, including interconnected voice, digital dispatch/PTT, and data services, all over a single customer handset. However, as an iDEN carrier, SouthernLINC Wireless' only potential domestic roaming partners are Sprint Nextel and, while it remains a separate company, Nextel Partners.¹⁸ Currently, Sprint Nextel and Nextel Partners provide each other with reciprocal roaming for the full range of iDEN voice, data and digital dispatch services and provide similar roaming services to customers of foreign iDEN carriers as well.¹⁹ Yet Nextel has consistently denied equivalent roaming services to customers of SouthernLINC Wireless, while Nextel Partners continues to deny SouthernLINC Wireless customers access to any roaming services whatsoever.

As described in detail in its previous submissions in this proceeding, and as acknowledged by the Commission in its *NPRM*,²⁰ SouthernLINC Wireless has had great difficulty over the years in separate attempts to negotiate a roaming agreement with either Nextel

¹⁸ / As the Commission is aware, the Sprint Nextel merger triggered a contractual "put" option – which has since been exercised – that compels Sprint Nextel to buy all of the outstanding shares of Nextel Partners that it does not already own. Although the exact timing of this buyout is unclear, pending the resolution of certain disputes between the parties, it will nevertheless result in Sprint Nextel becoming the sole source of roaming options for SouthernLINC Wireless and its customers.

SouthernLINC Wireless notes that there are two small wireless carriers that operate in the Western United States using the "Harmony" platform, a proprietary Motorola platform that is based on iDEN technology and which operates on a smaller-scale network. See Motorola's "Harmony" website at http://www.motorola.com/governmentandenterprise/northamerica/en-us/public/functions/browseproduct/productdetailpage.aspx?navigationpath=id_804i/id_2476i (last visited Nov. 28, 2005). These carriers do not provide a viable roaming solution for SouthernLINC Wireless' customers, since their coverage areas are extremely small and geographically remote. Additionally, neither of these carriers have been able to negotiate a roaming agreement with either Sprint Nextel or Nextel Partners.

¹⁹ / Sprint Nextel provides roaming for the full suite of iDEN services – including voice, PTT, and data – to customers of iDEN carriers based in Canada and Latin America. In fact, Sprint Nextel has had a reciprocal automatic roaming arrangement with Canada's Telus (formerly Clearnet Communications) since 1997, four full years before Nextel made either manual or automatic roaming available to customers of SouthernLINC Wireless.

²⁰ / *NPRM* at ¶¶ 15, 37.

or Nextel Partners.²¹ Rather than repeat all of the details from these previous submissions, none of which has ever been seriously challenged by either Nextel or Nextel Partners, SouthernLINC Wireless hereby submits into the record and provides as Attachment A to these comments a copy of the initial comments it filed in response to the proposed Sprint/Nextel merger, which provides more specific detail regarding SouthernLINC Wireless' efforts to obtain roaming arrangements with Nextel and Nextel Partners.

To this day, SouthernLINC Wireless still has no roaming agreement with Nextel Partners. It has only a limited, non-reciprocal arrangement with Sprint Nextel itself that requires SouthernLINC Wireless to pay excessive rates that are substantially above Nextel's own retail service rates. This arrangement also restricts SouthernLINC Wireless customers to voice roaming only, while denying them entirely the digital dispatch and data roaming services Sprint Nextel provides to customers of Nextel Partners, as well as to customers of foreign iDEN carriers. Furthermore, Nextel (prior to the merger) chose not to permit its own customers to roam on SouthernLINC Wireless' network at all – and objected to Nextel Partners doing so – consequently depriving these consumers of wireless access in areas of the Southeastern United States served by SouthernLINC Wireless, but not by Sprint Nextel (by either their legacy iDEN or CDMA networks) or by Nextel Partners.

²¹ / See, e.g., Comments, Reply Comments, and *ex parte* filings made by SouthernLINC Wireless in the Commission's proceeding on the *Sprint/Nextel Merger Application*; See also Comments, Reply Comments, and *ex parte* submissions made by SouthernLINC Wireless regarding the *1996 Order and Roaming NPRM* (CC Docket No. 94-54) and the *2000 CMRS Roaming NPRM* (WT Docket No. 00-193); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, Tenth Report, FCC 05-173 (rel. Sept. 30, 2005) ("*Tenth CMRS Market Competition Report*"). SouthernLINC Wireless hereby incorporates all of its these submissions in these dockets into the record of the present proceeding.

Based on its experiences with Nextel prior to its recent merger with Sprint, SouthernLINC Wireless is concerned that Sprint Nextel may take the position that it does not have any obligation (or intention) to roam with SouthernLINC Wireless on terms equivalent to its other roaming partners. For its part, Nextel Partners, having exercised its option to compel a full buyout by Sprint Nextel, is effectively no longer in a position to discuss roaming possibilities with SouthernLINC Wireless. Even if it were, Nextel and Nextel Partners, despite being independent businesses, have historically coordinated their responses to SouthernLINC Wireless' multiple requests to obtain roaming and, pursuant to a joint operating agreement that is still in effect, have coordinated to allocate their iDEN sales territories and to insulate each other from competition in the market for iDEN services.²² SouthernLINC Wireless does not expect any changes in this concerted refusal to deal while the buyout of Nextel Partners remains pending.

On the basis of these experiences, SouthernLINC Wireless believes that market forces alone have not proven sufficient to ensure that roaming is available to all wireless customers. Both Sprint Nextel and, while it remains a separate company, Nextel Partners have a strong motivation to withhold roaming as a means of placing SouthernLINC Wireless – virtually their only iDEN competitor – at a competitive disadvantage. This competitive motive has outweighed the benefit that they could provide their own subscribers by allowing them to receive roaming service in areas of the Southeastern United States that are not covered by their own networks.

²² / On July 5, 2005, Nextel Partners filed a lawsuit in the public docket of the New York Supreme Court against Nextel alleging violations of the joint operating agreement between Nextel and Nextel Partners. In connection with the Sprint/Nextel merger review proceeding, SouthernLINC Wireless submitted to the Commission for inclusion in the record of that proceeding a copy of the Nextel Partners complaint, which describes the relevant portions of the joint operating agreement. *See Ex Parte* Submission of SouthernLINC Wireless, WT Docket No. 05-63, filed July 18, 2005.

As a result, the current situation in the market for iDEN roaming services is not one of marketplace competition. It is, if anything, a state of market failure. As the wireless industry continues to develop and consolidate, it is a certainty that, absent enforceable obligations regarding roaming, market failure will soon occur throughout the industry with respect to the availability of roaming for voice, data, PTT, and other wireless services.

IV. THE NEED FOR AUTOMATIC ROAMING

As stated above, the Commission determined as far back as 1996 that roaming is “a critical element of CMRS service.”²³ This conclusion remains true today. It is only through roaming that *all* consumers are able to obtain access to mobile wireless services nationwide while ensuring that such services are deployed as widely as possible, conferring significant benefits to both consumers and the nation as a whole in areas ranging from the economy to public safety and national security.

Although the service areas of the nationwide CMRS carriers cover large portions of the United States, there are many areas of the country that they do not reach, including not only rural and remote regions but also smaller population centers not located near major highways. This segment of the population is far greater than the Commission’s annual CMRS Market Competition Reports would suggest. The Commission’s finding in the recently-released *Tenth CMRS Market Competition Report* that 97 percent of the total U.S. population lives in counties where three or more CMRS carriers are operating does not mean that 97 percent of the population actually has access to service from three or more carriers.²⁴ Furthermore, this finding does not take into account that these services are, by their nature, mobile, and that there are numerous consumers who may live in areas covered by three or more CMRS operators but who,

²³ / NPRM at ¶ 21.

²⁴ / See, e.g., *Tenth CMRS Market Competition Report* at ¶¶ 2, 41.

for a variety of reasons (*e.g.*, work, travel, etc.) either want or need access to wireless services while in more underserved areas.

The Commission acknowledges that, for purposes of its market competition reports, if a carrier serves even just a small portion of a county – such as along a highway that cuts through the corner of the county – then the Commission counts that carrier as serving the entire county, regardless of how many residents of the county actually have access to its service.²⁵ This flawed methodology creates a dangerously inaccurate picture of the true extent of consumer options for wireless services available to a significant number of U.S. consumers.²⁶

Although the Commission’s effort to quantify the extent of competition down to the county level for purposes of the Commission’s Market Competition Reports is certainly commendable, this approach is inherently flawed and, as the Commission itself cautioned, it does not accurately reflect the reality faced by consumers in these areas.²⁷ Therefore, data based on this methodology is insufficiently reliable to be considered in the context of a rulemaking proceeding and should not be given any persuasive weight or value in the Commission’s consideration of the impact of the availability of roaming for U.S. consumers.

A. Roaming Provides Equal Access to Wireless Services for All U.S. Consumers

A long-standing tenet of Commission policy has been that U.S. consumers should have equal access to communications services. This principle is delineated in Section 1 of the

²⁵ / *Id.* at ¶ 14.

²⁶ / In a separate statement issued in conjunction with the *Tenth CMRS Market Competition Report*, Commissioner Copps identified this as a specific concern that he had regarding the Report.

²⁷ / *Tenth CMRS Market Competition Report* at ¶ 14 (“Therefore, our analysis overstates to some unknown and unavoidable degree the total coverage in terms of both geographic areas and population covered.”).

Communications Act²⁸ and has since been embodied through such diverse policies as universal service, nondiscriminatory interconnection obligations, and the Commission's ongoing efforts to bridge the "digital divide." Within the context of commercial mobile wireless services, the only effective way to achieve this policy goal is through the adoption of an automatic roaming rule.

As discussed above, while the service areas of the nationwide CMRS carriers cover large portions of the United States, there are many areas of the country that are not covered by their networks, including not only rural and remote regions but also smaller population centers not located near major highways. U.S. consumers located in these areas must instead rely on smaller regional and rural CMRS carriers in order to receive wireless service, whether they live and work in the area or are just passing through.

Nationwide carriers are able to utilize roaming agreements with these regional carriers to fill in holes in their own coverage and to effectively expand the geographic area in which *their* customers can receive service without incurring the significant expense of building out additional network facilities and obtaining additional spectrum. As a result, their customers are generally able to receive wireless service throughout the United States, even when they find themselves in areas not served by their own carrier's network.

The situation is reversed for U.S. consumers who live and work in the areas not covered by the networks of the nationwide carriers. If these consumers want to receive any wireless service at all, their choice is a regional or rural carrier who has built and who operates the networks that actually serves the area. However, if they travel outside of their carrier's network service area, they cannot receive any wireless service whatsoever if roaming is not available to them, thus restricting their access to wireless service to a relatively small area and denying them

²⁸ / 47 U.S.C. § 1.

wireless service entirely if they travel too far from home. As a result, absent roaming, these consumers do not have equal access to communications services as compared to those in larger markets, and they are effectively disadvantaged by the more limited mobility of the mobile wireless service available to them.

More serious roaming limitations exist for data and other wireless services, such as “push-to-talk,” which are becoming an ever-increasingly important component of the broader mobile services market. SouthernLINC Wireless, along with many regional and rural carriers, has expressed grave concern over the ability to obtain such roaming services, and the unavailability of roaming for data and other wireless services for these carriers’ customers could place consumers, businesses, and enterprises in rural or underserved areas on the wrong side of a “wireless divide” similar to (and even compounding) the “digital divide” in broadband services that the U.S. Government has been attempting to eliminate.

Even in areas covered by multiple carriers, the availability of roaming may be affected by other factors such as underlying carrier platforms – *e.g.*, CDMA, GSM, iDEN, etc. – which can limit the extent to which consumers are able to receive roaming service when they travel or find themselves located outside of their “home” areas. Many consumers in these areas also have specific service needs that may be best met by a regional carrier, but the inability to roam would effectively force these consumers to compromise their local service needs for more expansive coverage, or vice versa. These consumers would be just as effectively disadvantaged with respect to access to communications services as those in more outlying areas.

As discussed in more detail below, wireless services – including voice, data, PTT, and other services – have a significant impact on the U.S. economy, and this impact is projected to grow exponentially in just the next decade. Without roaming, consumers, enterprises, and

organizations located in rural or underserved areas would be placed at a significant economic and competitive disadvantage simply because of geography. In addition, this disadvantage would extend to those who frequently operate in or otherwise travel to or through such areas and to those with specific local service needs not met by all or most CMRS carriers. With roaming, however, these consumers (and, in turn, these regions) will be able to take equal advantage of the same economic benefits, thus increasing the overall benefit of wireless services to the U.S. economy as a whole.

B. Wireless Spectrum is a Limited Resource

One of the arguments that has often been made against the adoption of a roaming rule is that such a rule would lessen or eliminate the incentives smaller wireless carriers would otherwise have to build out their own physical networks and infrastructure in order to expand their service area. This flimsy argument ignores the fact that the essential component of wireless service – wireless spectrum – is a finite, limited resource.

Only a limited number of licenses allowing the use of CMRS spectrum are available in any given geographic area, and in many parts of the country – particularly in and around larger primary and secondary markets – there are simply no more licenses available for new market entrants. Although the Commission now allows service providers to obtain licenses or lease spectrum on the secondary market, these measures still cannot overcome the fact that there is only so much spectrum available, and many of those licensees who currently hold spectrum require this spectrum for their own needs. For example, carriers require additional spectrum capacity in order to roll out their new mobile broadband platforms. Accordingly, it is highly unlikely that competitors who control spectrum would be willing to lease it to new entrants. As a result, to the extent a potential market entrant is even able to find a party willing to either sell

their license or lease suitable spectrum in the first place, the cost and burden of gaining access to this spectrum remains very high.

The Commission has also done significant work recently to identify and allocate additional spectrum for CMRS, including the new Advanced Wireless Service (AWS) spectrum that will be auctioned soon. Even this spectrum is limited, however, and much of it will not be usable for providing commercial services until existing incumbents are relocated (a time-consuming, complex, and potentially expensive project in and of itself) and equipment capable of using this spectrum – including handsets and network infrastructure – has been developed, certified, and placed on the market. This means that, as a practical matter, most of this newly-allocated spectrum is not readily available, nor is there any guarantee of success at auction for any carrier. Thus, this newly-allocated spectrum does not provide an immediate, feasible alternative for potential new entrants.

It should also be noted that roaming actually increases the efficient use of the country's limited spectrum resources. When a customer of another carrier roams onto a licensee's network and places or receives a call, this roaming customer utilizes spectrum not otherwise in use at that instant and generates roaming revenue for the licensee.

C. Regional and Rural Carriers Play a Vital Role in their Regions and Communities and are an Essential Element of a Reliable Nationwide Communications Infrastructure

Just as the largest wireless carriers provide a valuable service through the provision of nationwide coverage, regional and rural carriers also play a vital role in making wireless service available to all U.S. consumers. As discussed above, many smaller carriers provide service in areas not covered by the networks of the large regional and nationwide carriers, and in some areas, they may be the only source of wireless service available. However, these regional and rural carriers also provide much more.

The regional and local focus of these carriers enables them to tailor their networks to meet the needs of the people who live and work there, providing the type of coverage and service that goes beyond the highway corridor to reflect the actual lives of the area's residents and communities. Their local and regional presence results in strong ties both with and within the communities they serve, which is reflected in the level of service they provide to consumers in these areas. These qualities make regional carriers an attractive service option for consumers. Many regional carriers, like SouthernLINC Wireless, provide service not only in rural regions, but also in larger metropolitan areas in direct competition with the nationwide carriers, and, despite the presence of the nationwide carriers, hundreds of thousands of consumers in these areas nevertheless opt to receive service from the regional carrier.

Regional carriers also continue to be a source of innovation within the wireless industry and are often the first to introduce new services, pricing plans, and other innovations within their regions, despite the presence of the nationwide carriers. Nationwide carriers are then compelled to match these innovations in order to compete in the region and, as a result, these new services and offerings become widely available throughout the country. For example, within its service area in the Southeastern United States, SouthernLINC Wireless was the first iDEN carrier to provide wireless data service and the first CMRS carrier to provide a prepaid service offering that included PTT service.

In addition, regional and rural carriers play a vital role in public safety, often serving as an important component of emergency communications. For instance, because of its expansive and reliable coverage within the region, SouthernLINC Wireless' service is widely used by local and statewide public safety agencies, local governments, public utilities, and emergency services such as ambulance companies. In fact, SouthernLINC Wireless' CityWatch program in Atlanta,

Georgia, provides an excellent example of both regional carrier innovation and the public safety role of regional carriers. In June 2000, SouthernLINC Wireless joined with the Metropolitan Atlanta Crime Commission to establish the CityWatch network, which was designed to allow law enforcement agencies – including the Atlanta Police Department and the Marietta Police Department – and numerous private security forces in the Atlanta metropolitan area to communicate with each other directly and instantly over a private network operated by SouthernLINC Wireless.

Additionally, regional and rural carriers also serve as an essential link in establishing and maintaining a reliable nationwide communications infrastructure. When Hurricane Katrina slammed into the Gulf Coast region on August 29, 2005, both regional and nationwide carriers immediately launched large-scale efforts to restore wireless services which, due to the destruction of many landline facilities throughout the region, were for a time the primary means of communication. SouthernLINC Wireless – whose service area includes the Gulf Coast regions of Alabama, Mississippi, and the Florida panhandle – was able to keep its network largely operational in the affected areas throughout the storm and its immediate aftermath. As of September 1, 2005, SouthernLINC Wireless had ninety-eight percent of its sites up and operational and was the sole source of wireless communications in Gulfport, Mississippi, and along much of the Mississippi coast, providing much-needed communications service for emergency, utility, and government personnel – including the U.S. Coast Guard – conducting rescue and relief efforts. By September 8, 2005, all of SouthernLINC Wireless' existing sites were on the air and an additional two sites had been put into service. During this time, SouthernLINC Wireless was able to fulfill urgent communications needs throughout the Gulf

Coast region of Alabama, Mississippi, and Florida until other wireless networks could be brought back into service.

One example of the critical role that SouthernLINC Wireless played in the recovery and restoration efforts immediately following Hurricane Katrina can be found in the efforts of Mississippi Power to restore electric service to its 195,000 customers in the Gulf Coast region, all of whom lost power as a result of Katrina. Despite significant damage to its infrastructure (including the destruction of its own corporate headquarters) and enormous logistical hurdles, Mississippi Power succeeded in restoring power to all of its customers who could safely receive it in just twelve days.²⁹ During this time, SouthernLINC Wireless handsets provided virtually the only means of communication on Mississippi's Gulf Coast for the first seventy-two hours, and a unique workaround developed by SouthernLINC Wireless subsequently let its customers bypass the landline switches in the area (which were either overworked or incapacitated) in order to make voice telephone calls.³⁰ As a result, according to an article in USA Today, "[w]hile others struggled to communicate at all, Mississippi Power could hold conference calls with line crews in the field."³¹

On November 16, 2005, the Senate Committee on Homeland Security and Governmental Affairs held a hearing to explore what the U.S. Government could learn from the private sector's response to Hurricane Katrina and invited David Ratcliffe, President and CEO of Southern Company (the parent company of Mississippi Power) to speak about Mississippi Power's

²⁹ / See Dennis Cauchon, *The Little Company that Could*, USA TODAY, Oct. 9, 2005 (updated Oct. 10, 2005), available online at http://www.usatoday.com/money/companies/management/2005-10-09-mississippi-power-usat_x.htm. A printed copy of this article is provided as Attachment C to these comments.

³⁰ / *Id.*

³¹ / *Id.*

response and remarkable recovery. During his testimony, Mr. Ratcliffe singled out the service provided by SouthernLINC Wireless, stating that “[c]ommunications is crucial in responding to disasters – especially the ability to communicate with thousands of workers” and further stating that for most of the twelve days it took for Mississippi Power to restore service, “the only viable communication we, or the coast of Mississippi, had” was SouthernLINC Wireless.³²

Much of SouthernLINC Wireless’ performance during and immediately after Hurricane Katrina can be attributed to its regional focus. Because of this regional focus, SouthernLINC Wireless’ infrastructure was designed specifically to withstand stressful weather conditions in the Southeast, including hurricanes. By deploying a regional infrastructure with considerable redundancy and the ability to quickly implement emergency “work-arounds” where necessary, SouthernLINC Wireless was able to restore its operations in the affected area to near pre-Katrina levels within three days and was even able to add capacity to accommodate the dramatic spike in demand for wireless service. SouthernLINC Wireless’ regional ties also facilitated its ability to immediately address any systems issues in the affected area and to work closely with critical customers to find solutions to quickly meet their communications needs.³³ If SouthernLINC Wireless had been able to enter into a roaming agreement with Nextel Partners, or if Nextel allowed its own customers to roam onto SouthernLINC Wireless’ network, SouthernLINC Wireless could have also provided similar service to their customers in those regions affected by

³² / *Hurricane Katrina: What Can Government Learn from the Private Sector’s Response?: Hearing Before the Senate Comm. on Homeland Security and Government Affairs*, November 16, 2005 (Testimony of David Ratcliffe, President and CEO of Southern Company). A copy of Mr. Ratcliffe’s testimony is provided as Attachment D to these comments.

³³ / For example, during the early phase of Katrina recovery, an issue was identified with calls placed to the 228 area code (covering much of the Mississippi Gulf Coast, including the cities of Gulfport and Pascagoula) due to a problem with the local phone company. SouthernLINC Wireless was able to program its public safety and utility customers with toll-free numbers for their SouthernLINC Wireless phones that allowed them to receive phone calls from non-SouthernLINC Wireless customers.

Hurricane Katrina that were either not covered by the networks of Nextel or Nextel Partners or where their service had been disrupted.

SouthernLINC Wireless therefore submits that one of the lessons of Hurricane Katrina is that large wireless carriers and smaller regional carriers are complementary and indispensable components of a reliable nationwide communications infrastructure. The value of these complementary roles may be lost, especially in times of emergency, if these carriers' end-users are prevented from roaming on each other's networks.

D. Roaming Would Provide Interoperable Communications to Emergency Responders and Providers of Disaster Relief and Recovery

Nationwide access to the full range of mobile wireless services also confers a significant public interest benefit in addition to the interests of consumers – namely, interoperability for public safety and disaster response and recovery.

Throughout the nation, public safety, government agencies, utility maintenance and recovery crews, and other public service entities utilize commercial mobile services either as their primary means of communication or as a back-up to their own private voice, dispatch, and data communications systems. With nationwide access through automatic roaming to commercial mobile voice, dispatch/PTT, and data services, these entities would effectively have interoperable communications capabilities, dramatically improving their ability to coordinate their activities and efforts during emergencies, particularly during large-scale response and recovery operations involving multiple entities from around the country.

SouthernLINC Wireless itself serves many public safety and utility customers within its region who may be – and frequently are – called on to assist in emergencies or disaster recovery efforts outside of SouthernLINC Wireless' service territory, and these customers rely on access to the full range of wireless voice, dispatch/PTT, and data communications services in order to

carry out their duties. As an example of this need, Alabama Power Company, Georgia Power, and Gulf Power, all of which use SouthernLINC Wireless' services and system for communications for their crews, recently sent letters to SouthernLINC Wireless emphasizing their need for dispatch roaming when operating outside of their service area in order to assist other utilities in storm recovery and restoration efforts.³⁴ As the letter from Alabama Power Company states, "The importance of communications is foremost in our minds as we reach the end of what has been a devastating hurricane season. I hope this letter has clearly described for you the important role that dispatch roaming would fulfill in our emergency restoration efforts."³⁵

E. Automatic Roaming Must be Available for All Mobile Wireless Services

One of the defining characteristics of CMRS is mobility. Although the majority of CMRS usage generally occurs within the user's "home" area, consumers also expect and rely on having access to voice, data, PTT, and other wireless services when they travel, even if they are outside their carrier's service territory. For customers of regional carriers, this access can only occur as a practical matter if roaming service is available for a reasonable rate. Consumers expect and accept that they may have to pay additional charges when they roam outside of their home network, but if these charges are too high, roaming becomes too expensive, and the consumer is essentially forced to forgo this access due to its cost. Similarly, if the availability of roaming is restricted only to certain services (such as voice), consumers are effectively denied

³⁴ / Letter from Charles F. Wallis, Emergency Operations Center, Alabama Power Company, to Greg Clyburn, SouthernLINC Wireless, dated November 21, 2005; Letter from Aaron B. Strickland, Distribution and Emergency Operations Manager, Georgia Power, to Holly Henderson, SouthernLINC Wireless, dated November 21, 2005; Letter from Andy McQuagge, Company Emergency Management Center Manager, Gulf Power, to Gloria Ellwood, SouthernLINC Wireless, dated November 22, 2005. Copies of these letters are provided as Attachment E to these comments.

³⁵ / *Id.*

access to other wireless services that make up an increasingly significant and important component of CMRS.

1. The Need for Consumer Access to Mobile Wireless Services through Automatic Roaming During Times of Emergency

The need for consumers to have access to wireless service beyond their carrier's service area does not affect only those who travel by choice. As the Commission is aware, the devastation wrought by Hurricane Katrina resulted in the displacement and involuntary relocation of hundreds of thousands of residents not only from New Orleans but also from SouthernLINC Wireless' service area in the Gulf Coast regions of Mississippi and Alabama. Because SouthernLINC Wireless has been unable to obtain reasonable roaming arrangements despite its best efforts, SouthernLINC Wireless customers who have been displaced or involuntarily relocated outside of its service area would have either suffered decreased access to wireless communications service or, for those compelled to relocate to areas served by Nextel Partners (such as Shreveport and Lafayette, Louisiana, or Little Rock, Arkansas), would have had their access to wireless service cut off altogether.

There is no technological reason for these customers to suffer through this type of experience. The iDEN networks of Sprint Nextel and Nextel Partners are fully capable of accommodating roaming SouthernLINC Wireless customers and are capable of providing them the same voice, digital dispatch/PTT, and data services that they provide each other and to customers of foreign iDEN carriers. However, due to the unreasonable and discriminatory roaming policies and practices pursued by Sprint Nextel and Nextel Partners, customers of SouthernLINC Wireless who were displaced or relocated outside of its service area as a result of Hurricane Katrina could only receive basic voice roaming service from Sprint Nextel (for which Sprint Nextel charges excessive rates) and could not receive any PTT or data services.

Nevertheless, they fared better than those relocated to areas served by Nextel Partners where, as a result of Nextel Partners' long-standing refusal to roam, they would not have been able to receive any wireless service whatsoever.³⁶

2. The Broader Impact on U.S. Consumers and on the U.S. Economy of the Availability of Automatic Roaming for All Mobile Wireless Services

The explosive growth of the mobile wireless sector over the past decade has had a significant impact on both consumers and on the U.S. economy as a whole. In addition to direct supply side benefits generated by spending on wireless products, equipment and services, the creation of millions of jobs, and billions of dollars in government revenues collected through spectrum auctions, taxes, regulatory fees, etc., the wireless sector also produces enormous productivity gains worth billions of dollars each year to the U.S. economy. As discussed below, roaming must be available for all mobile wireless services – including voice, data, PTT, and other services – in order for these gains to be fully realized and made available to all U.S. consumers and enterprises.

As the Commission is aware, CTIA recently commissioned Ovum, a highly-respected international research and consulting firm in the telecommunications and information technology field, to conduct an in-depth study and analysis of the impact of the U.S. wireless telecommunications industry on the U.S. economy. Utilizing conservative figures and assumptions, Ovum estimated that the use of wireless data applications in the United States resulted in an economic benefit through productivity gains of more than \$8.5 billion in 2004

³⁶ / It is ironic to note that, at the same time, a Canadian customer of Telus (a Canadian iDEN carrier) could visit these same areas and receive the full suite of roaming services – including voice, dispatch/PTT, and data – denied to displaced SouthernLINC Wireless customers.

alone.³⁷ Ovum based this estimate on the use of just five wireless data applications, stating that it “represents a lower limit on the current productivity gains generated” since it does not include the impact of additional data applications that are in use but which were not covered by their study.³⁸ Furthermore, on the basis of the same five wireless data applications, Ovum projects that the productivity gains resulting from the use of wireless data services will result in an annual economic benefit in the U.S. of approximately \$13.1 billion in 2005, \$63 billion in 2010, and \$85.5 billion in 2015.³⁹ According to Ovum, additional wireless applications that will emerge over the next five years will further increase these identified gains “exponentially.”⁴⁰

Ovum’s analysis of the economic benefits of wireless data services, including nine real-world case studies of mobile data services provided by CMRS carriers, is particularly noteworthy.⁴¹ Of the nine Ovum case studies, seven required access to wireless data services on a large regional or nationwide basis in order for the full economic benefits to be realized, regardless of where the company or organization itself was located. The resulting implication is that enterprises or organizations located in areas not served by the nationwide carriers would be unable to recognize similar economic benefits – even when their own carrier can provide these services – if roaming for data and other wireless services is not available to them. These entities would therefore be placed at a significant economic and competitive disadvantage simply

³⁷ / David Lewin and Roger Entner, Ovum, *Impact of the U.S. Wireless Telecom Industry on the U.S. Economy: A Study for CTIA – The Wireless Association*, September 2005 (“Ovum Report”) at 21. A copy of the full Ovum Report is available through the CTIA website at http://files.ctia.org/pdf/Final_OVUM_Indepen_Report_Economy.pdf.

³⁸ / *Id.* at 21-22.

³⁹ / *Id.* at 31-34.

⁴⁰ / *Id.* at 32.

⁴¹ / *Id.*, Annex C

because they are geographically located in a rural or underserved area and have no access to data roaming service.

Further, the overall benefit of wireless services to the U.S. economy as a whole would be substantially diminished if significant segments of the population are unable to recognize the gains that these services can provide. Conversely, with nationwide access to data and other wireless services through roaming, these entities would also be able to reap the substantial economic benefits that such services can provide, and these benefits would in turn inure to the communities where they are located, as well as to the broader U.S. economy.

V. MANUAL ROAMING IS INSUFFICIENT TO MEET THE NEED FOR CONSUMER ACCESS TO MOBILE WIRELESS SERVICES; AUTOMATIC ROAMING IS REQUIRED

As demonstrated above, roaming is essential in ensuring that all U.S. consumers have equal access to mobile wireless services, and equal access can only be ensured through the utilization of automatic roaming.

Manual roaming generally requires consumers to enter a credit card number in order to make a roaming call. In practice, the consumer must first correctly enter a 16-digit credit card number, then (in many cases) enter the expiration date of the card, and then wait for authorization both from the credit card issuer and the carrier providing the roaming service before the call can even be placed (assuming that every digit has been entered correctly by the consumer, processed correctly by the carrier and by the credit card company, and that there is no interruption in the communications between any of these parties during processing). This process is an extraordinarily burdensome and time-consuming one that, as a practical matter, most consumers are no longer willing to go through. In fact, as far back as 1996, during one of the predecessor proceedings to this *NPRM*, one carrier commenter characterized manual roaming

as a “technological dinosaur” and noted that, in its experience, ninety-five percent of customers preferred not to place calls at all rather than to deal with manual roaming.⁴²

Aside from the burden involved, manual roaming also requires that the consumer have a credit card with them that they can use. In the case of Hurricane Katrina, many of the people who were dislocated may not have had the time or opportunity to take their credit cards with them, may have lost them during the storm or while evacuating, may have needed to preserve their card balances in order to pay for essentials such as food, shelter, and clothing, or may not have had credit cards in the first place. For these people, manual roaming would have effectively been unavailable. Furthermore, the substantial majority of wireless consumers are not even aware of either the existence of manual roaming or how to activate manual roaming. For these reasons, manual roaming is entirely insufficient as a means for ensuring that consumers have access to wireless services.

In contrast, automatic roaming eliminates these burdens and obstacles and is virtually invisible to the customer. From a carrier perspective, automatic roaming is also far easier to administer and implement than manual roaming, a solution that was established when the CMRS industry was in its infancy. Since that time, CMRS networks, systems, and processes for handling roaming have become much more sophisticated, to the point where it is far more efficient for them to process roaming calls automatically, thus eclipsing the need for manual roaming. In fact, manual roaming, in comparison to automatic roaming, is now widely viewed by many carriers as a burden. From both a consumer and a carrier perspective, this rule is ineffective as a means of ensuring the availability of roaming for all wireless services.

⁴² / *1996 Order and Roaming NPRM*, CC Docket No. 94-54, Comments of the Alliance of Independent Wireless Operators at 8 (filed Oct. 4, 1996).

Therefore, any rules and policies that are adopted in order to ensure the availability of roaming for wireless services must require the provision of automatic roaming.

SouthernLINC Wireless notes that, while generally ineffective, a manual roaming rule is still better than no roaming rule at all, and it would support elimination of the manual roaming rule only after an automatic roaming rule has been fully implemented.

VI. COMPETITION AND ECONOMIC ISSUES

In the *NPRM*, the Commission requested that commenters address the potential impact that the adoption of an automatic roaming rule may have on CMRS competition, as well as what the potential costs of such a rule could be. The Commission also addressed concerns that have been raised that automatic roaming obligations could potentially serve as a disincentive to the development and deployment of new services, technologies, and service offerings.

SouthernLINC Wireless believes that any such concerns are unfounded and that the adoption of automatic roaming obligations will actually serve to promote both competition and the ongoing development and deployment of innovative new wireless services and technologies, all to the benefit of wireless consumers.

In fact, SouthernLINC Wireless submits that it is actually the lack of any clear automatic roaming obligation that poses the greatest danger to competition and to consumers, especially given the current trend of industry consolidation. Market forces have yet to make automatic roaming for all mobile wireless services available to all wireless consumers, and the continued unavailability of automatic roaming could economically disadvantage significant numbers of U.S. consumers – including individual and enterprise users – as well as prevent the U.S. economy as a whole from recognizing the full economic benefits that wireless voice, data, PTT, and other services are expected to bring over the next five to ten years.

A. The Nature of Competition for Wholesale Roaming Services

For several years now, the Commission has consistently characterized the CMRS market as competitive, frequently pointing to CMRS as an example of market success. While it is true that competition for retail CMRS services appears vigorous, this is not necessarily the case for the underlying wholesale services – such as roaming – that serve as necessary inputs for the provision of retail services to end-users. In fact, as discussed below and as explained in detail in the attached McAfee Report,⁴³ the separate market for wholesale roaming service is better characterized as one where monopoly and duopoly situations prevail and where, unlike the market for retail CMRS, there has already been market failure and where future market failure is likely to occur.

In order for a carrier to be able to provide roaming service to its own customers, it must first obtain roaming service on a wholesale basis from the carrier with whom it wishes to roam. However, the pool of available roaming partners is much more limited than the total number of CMRS carriers operating in a given region because at the wholesale level, unlike at the retail level, different air interface technologies are not substitutable. In other words, while a retail customer is generally free to receive service from any CMRS carrier in the area regardless of technology, carriers can only receive wholesale roaming service from a carrier that uses the same technology (*e.g.*, an iDEN carrier can only roam with another iDEN carrier, just as a CDMA carrier can only roam with another CDMA carrier).

As indicated in the McAfee Report, because of the lack of substitutability between different carrier technologies, any analysis of the state of competition for wholesale roaming services must therefore consider each technology as defining a separate wholesale roaming

⁴³ / See Attachment B to these comments.

market.⁴⁴ For example, if a given region is served by two CDMA carriers, a GSM carrier, and an iDEN carrier, then there are four carriers competing in the retail services market in the region. However, from the standpoint of wholesale roaming, there are in fact two carriers competing in the market for wholesale CDMA roaming services, one carrier in the market for wholesale GSM roaming services, and one carrier in the market for wholesale iDEN roaming services. These facts demonstrate the level of market concentration and the prevalence of monopoly and duopoly situations that carriers seeking roaming partners must contend with.⁴⁵

As SouthernLINC Wireless has frequently stated, the market for wholesale iDEN roaming services is essentially a monopoly market with only one provider – either Sprint Nextel or Nextel Partners – in any given area outside of SouthernLINC Wireless’s service territory in the Southeast. However, as illustrated in greater detail in the McAfee Report, the markets for wholesale CDMA and GSM roaming services are only slightly less concentrated in most regions. For example, the McAfee Report shows that, of the fifty largest BTAs, only two BTAs have three or more CDMA carriers and three or more GSM carriers.⁴⁶

In turn, these monopoly and duopoly providers of roaming services have strong economic incentives, as well as the ability, to engage in anticompetitive conduct and practices that would inhibit or prevent new market entry and potentially foreclose regional carriers from the broader CMRS market entirely. The attached McAfee Report explains these incentives, their operation, and their consequences in detail. Other than the ability to deny roaming services altogether, the most significant ability carriers in a monopoly or duopoly situation have is the ability to charge roaming rates that are not just beyond the competitive level but also well beyond the level of the

⁴⁴ / McAfee Report at 7.

⁴⁵ / *Id.* at 7, 10 – 11.

⁴⁶ / *Id.* at 11.

carrier's own retail rates for its retail CMRS services.⁴⁷ In SouthernLINC Wireless' experience, this behavior is exactly what is occurring with iDEN roaming because it must pay roaming rates substantially above Nextel's retail rates. SouthernLINC Wireless understands that other carriers have encountered such practices as well.

Wholesale roaming rates that exceed retail rates are a clear example of market failure. A carrier's prevailing retail rates in a competitive market are rates that a carrier voluntarily offers to the public and which inherently cover all the costs of providing the service, including network operating costs and such costs as customer acquisition, customer service, and customer support, as well as a reasonable profit for the carrier.⁴⁸ However, several of the costs that must be recouped in a carrier's retail rates – particularly customer acquisition and support costs, which must account for a portion of retail revenues – are not incurred and therefore need not be recouped when a carrier provides roaming services. While the provision of roaming service does involve certain unique costs, these costs are generally marginal and are more than offset by the customer-related costs that are avoided.⁴⁹

Nevertheless, a carrier's lowest prevailing retail rates still provide a suitable point of reference when considering the rates that a carrier charges for roaming, since the existence of robust retail competition, together with the need to recover the costs of providing retail service while recognizing a profit, means that these retail rates will implicitly be reasonable.⁵⁰ To the extent the rates a carrier charges for wholesale roaming exceed the lowest prevailing retail rates

⁴⁷ / *Id.* at 12.

⁴⁸ / *See Id.* at 8 – 10.

⁴⁹ / *See Id.* at 8.

⁵⁰ / *See Id.* at 16 – 18.

that it charges its own subscribers, these roaming rates would presumably be unreasonable and excessive.⁵¹

The next step, of course, is how to determine what a carrier's lowest prevailing retail rate is in order to develop an appropriate comparison to that carrier's wholesale roaming rates. Based on the recommendations in the McAfee Report, SouthernLINC Wireless submits that the most appropriate approach would be to look to carriers' retail rate plans for non-business customers that include the largest "buckets" of minutes and use these plans to determine a carrier's lowest prevailing retail rate on a per-minute basis.⁵² This approach would involve a straightforward analysis using easily accessible and publicly available information. Rate plans for non-business customers are generally available on carriers' individual websites, and those plans that provide the biggest buckets of minutes are most likely to reflect a volume discount (since one would expect a carrier's wholesale rates or retail rates to businesses or enterprise users to incorporate a volume discount of some sort).⁵³ Determining the carrier's lowest prevailing retail rate would then simply be a matter of dividing the price for the plan by the number of minutes provided in the "bucket." While this approach is not perfect, it is still relatively conservative, since any discrepancies or margin of error would actually tilt towards a finding that the roaming rate is reasonable.⁵⁴

As discussed later in Section IX of these comments, this approach can also be used by the Commission as a simple, efficient, fair, and effective mechanism for assessing, adjudicating, and remedying roaming issues and disputes. Specifically, as recommended in the McAfee Report,

⁵¹ / *See Id.* at 16.

⁵² / *Id.* at 18.

⁵³ / *Id.*

⁵⁴ / *See Id.* at 18.

the Commission should adopt the presumption that wholesale roaming rates that exceed a carrier's lowest prevailing retail rates (as determined pursuant to the approach discussed above) are presumptively unreasonable.⁵⁵ As set forth in the McAfee Report, the adoption of such a presumption, together with the adoption of an automatic roaming rule, would serve to address the lack of competition and potential for further market failure in the provision of wholesale roaming services and provide a minimally intrusive way for the Commission to ensure that regional carriers do not get unfairly squeezed.⁵⁶ At the same time, these requirements would not prevent carriers who provide roaming services from earning a reasonable return on their investment in their networks, since the requirement that wholesale roaming rates not exceed the carrier's own retail rates still allows for a healthy return on roaming while acting as a check on a carrier's ability to unfairly exercise market power.⁵⁷

B. Regional Carriers are Essential to a Competitive Mobile Wireless Market

Ever since CMRS was in its infancy, regional carriers have been an essential element in developing and maintaining a competitive retail CMRS market. Regional carriers were often the first carriers to provide any CMRS service in a given area, including large urban markets, and it was only through roaming with these regional carriers that the nationwide carriers were able to build out their nationwide networks and coverage areas in the first place. Now, with the nationwide carriers holding substantial market shares – and market power – and with the industry itself continuing to undergo significant consolidation, regional carriers are even more essential in ensuring that consumers will have access to competitive mobile wireless services now and in the future.

⁵⁵ / *See Id.* at 16.

⁵⁶ / *Id.* at 17.

⁵⁷ / *Id.*

As previously discussed in Section IV of these comments, regional carriers often have in-region service or coverage advantages over the larger nationwide carriers providing service in the same region. This compels the nationwide carriers to focus on improved services and service quality for consumers in the region in an effort to match what the regional carrier provides or to differentiate themselves not only from each other, but from the regional carriers as well.

Regional carriers are also often the first to introduce new services, pricing plans, and other innovations within their regions – innovations which the nationwide carriers must either match or adopt. As an example, SouthernLINC Wireless was the first iDEN carrier in its service area, which covers both rural and major urban markets in the Southeastern United States, to provide wireless data service and the first CMRS carrier to provide a prepaid service offering that included PTT service – services that the nationwide carriers operating in this region have since attempted to match. The McAfee Report also describes innovative service plans, including flat-rate unlimited local and long distance calling plans, which have been introduced by two regional CDMA carriers, Leap Wireless and MetroPCS.⁵⁸ According to the McAfee Report, none of the nationwide carriers offer comparable plans.⁵⁹

However, as discussed elsewhere in these comments, consumers need to be able to continue to receive access to mobile wireless services when, for whatever reason, they find themselves located outside of their “home” carrier’s service area. This capability is, understandably, highly valued by consumers, but the only way that regional carriers can provide such service to their customers is through roaming. Many consumers in service areas covered by both regional and nationwide carriers have specific service needs (*e.g.*, local coverage) that may be best met by the regional carrier, but if roaming is not available, these consumers are forced to

⁵⁸ / *Id.* at 15.

⁵⁹ / *Id.*

compromise these needs in order to receive more expansive coverage, or vice versa. In fact, the inability to receive service outside of their carrier's service area is one of the top reasons that consumers cite for leaving a regional carrier when switching carriers.

Nationwide carriers thus have substantial leverage over regional carriers, since they can use the regional carriers' need for roaming service, along with the lack of any specific automatic roaming obligation, to either demand unreasonable roaming rates or to deny roaming service altogether in order to place the regional carriers at a competitive disadvantage and squeeze them out of the market. This behavior hurts not only the regional carriers themselves, but it also hurts consumers by forcing them to compromise on their service needs and decreasing their competitive options.

As the industry continues to consolidate and the number of remaining carrier options for consumers continues to shrink, it is urgent that the Commission adopt automatic roaming obligations for all CMRS carriers in order to establish and maintain a true competitive balance in the CMRS market to the benefit of all wireless consumers.

VII. TECHNICAL ISSUES

In addition to public interest and competition issues, roaming also involves certain technical issues that must be addressed. For example, while it is clear that a CDMA carrier cannot be required to accommodate roamers using GSM handsets due to the existing incompatibility of these air interfaces, it is less clear what accommodations should be made when a new technology or service is introduced or when a carrier makes changes or upgrades to its system.

Nevertheless, SouthernLINC Wireless' own experience has demonstrated that "technical issues" are often used by some carriers as a pretext for denying roaming, even though most of these issues have either already been addressed or can be easily resolved through good faith

negotiations between the carriers. For instance, with regard to dispatch/PTT and data roaming between iDEN carriers, the relevant technical issues would appear to have been resolved, given that Sprint Nextel and Nextel Partners currently provide these roaming services to each other and to foreign iDEN carriers.⁶⁰ The Commission must therefore be wary of claims that automatic roaming for any service – whether in general or between specific carriers – cannot be implemented for technical reasons, and the absence of good faith effort on the part of any carrier to negotiate these issues should weigh against any such claim.

A. The Impact of Roaming on Service Quality

Some carriers have expressed concern over the effect of roaming on the service quality of their own networks and the service quality that their customers would receive when roaming on another carrier's network. For carriers concerned about the quality of service that their customers will receive when roaming on other carriers' networks, SouthernLINC Wireless points out that, under its proposals (described in more detail in Section IX below), carriers would only be required to accommodate inbound automatic roaming – *i.e.*, they would be required to allow customers from other carriers to roam on their network, but they would not be required to allow their own customers to roam on other carriers' networks other than through manual roaming. This approach would allow carriers to assess the service quality available to their customers when determining whether to allow them to automatically roam on another carrier's network.

B. Impact of Carrier Changes or Upgrades to their Systems

The Commission has requested comment on how an automatic roaming rule would affect a carrier's ability to make certain changes to its system for "legitimate business reasons (*e.g.*,

⁶⁰ / See, *e.g.*, *Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Petition for Limited Waiver of Nextel Partners, Inc. at 10 – 11 (filed Oct. 17, 2005).

increasing capacity, spectrum efficiency, fraud control, or deployment of enhanced features),” as well as whether any automatic roaming requirements applicable to “2G” systems should also apply to upgraded 2.5G or 3G systems.⁶¹

As an initial matter, SouthernLINC Wireless is concerned with the Commission’s suggestion that the existence or applicability of an automatic roaming obligation be restricted to a particular technology or platform generation. The roaming problems that have been brought to the Commission’s attention thus far do involve 2G systems, but this is simply because 2G technologies are by far the most widely-used and widely-deployed in the current market, not because there is any problem that is inherent to 2G technologies themselves.

Furthermore, roaming is not only an issue of technology but also of policy and practice. An automatic roaming rule, such as the one proposed herein, should and must be technology neutral, and the only influence a carrier’s technology should have in a particular case is on the question of whether, on a case-by-case basis, roaming can occur, not whether it should occur.

This discussion raises the issue of determining when roaming can technologically occur between two carriers and should therefore be made available. SouthernLINC Wireless submits that roaming between two carriers should be presumed to be technologically feasible – and thus made available – when the carriers have the same or compatible air interfaces, including air interfaces that are backward-compatible (for example, a 2G or 2.5G CDMA handset could still operate on a 3G WCDMA network, although the handset would only be able to provide 2G/2.5G-level services).

Although compatible air interfaces alone are not always sufficient to make roaming technologically possible between two carriers, any additional technical issues are typically

⁶¹ / *NPRM* at ¶¶ 30 and 44.

relatively minor and can generally be resolved through good faith negotiations and efforts. In the case of SouthernLINC Wireless' attempts to obtain roaming with Nextel, Nextel consistently attributed the length of time it took for a roaming agreement to be reached to "significant technical hurdles" to iDEN roaming (even though Nextel had long been roaming with a Canadian iDEN carrier). However, while it took well over five years to get Nextel to even agree to discuss these technical issues with SouthernLINC Wireless in the first place, once Nextel finally agreed to discuss these issues in good faith, it took less than three months for the parties to work out these issues and all the details of a contract. As stated above, the relevant technical issues regarding dispatch/PTT and data roaming would also appear to have been resolved, since Sprint Nextel and Nextel Partners currently provide these roaming services to each other and to foreign iDEN carriers.

SouthernLINC Wireless therefore submits that any automatic roaming rule or other obligation should also require good faith efforts by both parties to work out any technical issues related to roaming. Similarly, SouthernLINC Wireless agrees with and supports the Commission's suggestion that whenever a carrier makes changes or upgrades to its system that may affect the ability of other carriers to access and obtain roaming on its system, the carrier must take reasonable actions in good faith "to facilitate another carrier's efforts to achieve the capability to access its system."⁶²

In the *NPRM*, the Commission requested comments on multi-mode handsets and the possible impact of such handsets on roaming.⁶³ As part of their application for Commission approval of their merger, Sprint and Nextel frequently referred to the possible development of dual-mode CDMA/iDEN handsets that would permit their customers to receive service over both

⁶² / *Id.* at ¶ 30.

⁶³ / *Id.* at ¶ 47.

companies' legacy networks.⁶⁴ At this time, no such handset is currently available, nor has there been any publicly-announced date for the introduction of such a handset, thus making it impossible at this time to address the numerous questions regarding the ability of dual-mode handsets to overcome the substitutability problems that inherently limit competition in the market for wholesale roaming services. These questions include, for example: (i) whether a dual-mode Sprint Nextel CDMA/iDEN handset would be able to work on carrier frequencies other than those utilized by Sprint Nextel; (ii) whether dual-mode or multi-mode handsets will make all wireless functions available (*e.g.*, would an iDEN roamer using such a handset on a CDMA network be able to get voice, but not be able to get PTT, data, etc?) or result in any other diminution of service when roaming; (iii) when such handsets may become available (and to what extent); and (iv) whether such handsets will even prove to be operationally or commercially viable (meaning that they may be a technology that quickly exits the marketplace rather than becoming a long-term fixture).

While the introduction of commercially viable multi-mode handsets could serve to mitigate the problem of access to roaming, there are still far too many unknowns to consider their possible impact as anything more than random speculation at this point, and the mere possibility of such technologies should therefore not be taken into account in the Commission's consideration of how current roaming issues should be addressed. Furthermore, SouthernLINC Wireless believes that its proposals, which include an obligation for carriers to enter into and conduct good faith negotiations regarding technical and other issues, are sufficiently flexible to accommodate any future introduction of multi-mode handsets into the market.

⁶⁴ / See, *e.g.*, *Sprint/Nextel Merger Application* at ¶ 25.

VIII. INSUFFICIENCY OF EXISTING REMEDIES

Currently, the Commission's only remedy available for CMRS carriers contending with demands for unreasonable rates, terms and conditions and/or discriminatory treatment in their attempts to obtain roaming is to file a complaint with the Commission pursuant to Section 208 of the Communications Act alleging violations of Section 201 (prohibiting unreasonable charges and practice) and/or Section 202 (prohibiting unreasonable discrimination) of the Communications Act.⁶⁵ This process is entirely inadequate as a "means of ensuring the development of automatic roaming services in a competitive CMRS market" and is not even sufficient to address blatant abuses that are already occurring. Evidence of the inadequacy of this remedy can be found in the paucity of formal roaming complaints that have actually been filed with the Commission.

The primary problem is that, while the Commission has frequently held out Sections 201 and 202 as available means for addressing disputes regarding automatic roaming, carriers lack any certainty or clarity regarding the actual applicability of these provisions given the absence of a specific automatic roaming obligation under the Commission's current rules.

For example, a complaint regarding Section 201 would involve allegations that a carrier's roaming practices or refusal to roam are "unjust and unreasonable," but there is still no usable precedent – nor has there been any direction, clarification, or guidance from the Commission – as to what roaming practices or types of roaming conduct it considers to be "unjust and unreasonable." The fact that there is currently no clear regulatory obligation for carriers to even provide automatic roaming also imposes a substantial barrier to a petitioner's ability to demonstrate that certain roaming practices or conduct are unjust and unreasonable, and a

⁶⁵ / See 47 U.S.C. §§ 201, 202, and 208.

potential petitioner has no way of knowing – prior to expending the substantial cost and resources required to bring a complaint – whether the Commission will even consider its claims cognizable under Section 201. Given the lack of guidance and the numerous variables involved in roaming, as well as the cost of pursuing a matter that would essentially be a “shot in the dark,” filing a Section 201 complaint is effectively foreclosed as a viable option for most carriers.

With regard to complaints regarding Section 202, which would involve allegations that a carrier is unlawfully discriminating by failing to enter into a roaming agreement, a petitioner must show that it is “similarly situated” with the companies the carrier is favoring. This “similarly situated” requirement gives carriers substantial room to allege differences between their chosen roaming partners and the petitioner, again raising the specter of unduly protracted, complicated, and uncertain litigation. Moreover, as with Section 201, it may not even be possible for a potential petitioner to make a cognizable claim of unjust or unreasonable discrimination regarding roaming when there is no clear automatic roaming obligation in the first place. Complaints under Section 202 are thus also effectively foreclosed as an option for most carriers.

In addition to the formidable substantive obstacles described above, the process of pursuing a complaint under Section 208 is cumbersome, unpredictable, and imposes a tremendous burden on the party seeking relief. The petitioner faces significant evidentiary burdens from the outset, requiring substantial time and resources to be expended simply to prepare the complaint. Indeed, the petitioner’s ability to prepare a thorough complaint often requires access to information that may only be available through discovery (even though the opportunity to conduct meaningful discovery is limited).

In light of the forgoing, SouthernLINC Wireless believes that, if the Commission intends to rely on Sections 201, 202, and 208 to address roaming abuses, the complaint process must be reinforced with specific evidentiary presumptions regarding roaming. If this is done, the Section 208 process could potentially serve as an effective supplement to the adoption of an automatic roaming obligation. These proposed modifications are discussed in more detail below in Section IX.B. of these comments. However, even with these modifications, the Section 208 complaint process itself would still be an ineffective remedy absent an automatic roaming rule.

IX. RECOMMENDED MEASURES FOR ADDRESSING THE ROAMING ISSUE

As demonstrated throughout these comments, U.S. consumers and the public interest are harmed if automatic roaming for all mobile wireless services is not available, and market forces alone have thus far failed to make such automatic roaming available. Therefore, in order to ensure the development and availability of automatic roaming services in a competitive CMRS market and to ensure that all U.S. consumers have equal access to wireless services, SouthernLINC Wireless urges the Commission to adopt a three-prong approach:

1. The Commission should adopt a rule requiring all CMRS carriers to provide automatic *inbound* roaming for all services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions.
2. The Commission should streamline its Section 201/202 complaint process and adopt appropriate evidentiary presumptions reflecting the public interest need for roaming and the goals of the automatic roaming obligations. The Commission should also adopt appropriate procedural and decisional time limits to ensure that its actions and decisions under this process are sufficiently timely to provide appropriate redress in the fast-moving wireless market.
3. The Commission should give teeth to its rules, orders, decisions, and policies on roaming issues by adopting appropriate enforcement measures, including, but not limited to, forfeitures and enforceable orders compelling carriers to enter into good faith negotiations.

In conjunction with this approach, the Commission should also adopt an underlying presumption that, where a carrier charges wholesale roaming rates that exceed its own lowest prevailing retail rates, these roaming rates would presumptively be considered unjust and unreasonable, thereby establishing a simple, effective, and efficient mechanism for assessing, adjudicating, and remedying roaming issues and disputes.

Together, these proposals are designed to ensure the availability of automatic roaming services through the most efficient and least intrusive means possible, striking an appropriate balance between the public interest need for automatic roaming for all mobile wireless services and the need for carriers for sufficient flexibility to make appropriate business decisions in a competitive market.

SouthernLINC Wireless emphasizes that it still believes that the best way to make automatic roaming available is through good faith commercial negotiation between the parties, and to the extent parties can reach reasonable roaming agreements through such good faith negotiations, there would be no need for the Commission to invoke these measures. Yet, SouthernLINC Wireless' own experience has already demonstrated that certain carriers with substantial market power have to this day exhibited anything but good faith with respect to roaming and are still actively refusing to roam with non-affiliated carriers. As a consequence, the Commission must ensure that it has the necessary tools in place to prevent this from becoming an even greater industry-wide problem affecting even more consumers.

A. Adoption of an Automatic Roaming Rule

SouthernLINC Wireless urges the Commission to adopt a rule that would require all CMRS carriers to make inbound automatic roaming available for all mobile wireless services to any requesting technologically compatible carrier at reasonable rates and on reasonable and nondiscriminatory terms and conditions. This rule would ensure that all U.S. consumers have

equal access to wireless services and would address the problem of both current and future market failure in the availability of roaming for mobile wireless services. This rule would also confer substantial economic and non-economic benefits to the public, such as the promotion of public safety and national security through interoperability and the establishment of a reliable nationwide communications infrastructure.

At the same time, this rule would serve to promote the ongoing development and deployment of new and innovative wireless services throughout the country and foster increased competition even in the face of industry consolidation.

1. “Inbound Automatic Roaming”

For purposes of this proposed rule, “inbound” automatic roaming refers to the practice of a carrier allowing customers of other carriers to roam on its network. In other words, if Carrier A wants its customers to be able to roam on Carrier B’s network, then Carrier B must provide automatic roaming to Carrier A’s customers at reasonable rates and on reasonable and nondiscriminatory terms and conditions. However, Carrier B would not be required to enter into an agreement enabling its own customers to roam on Carrier A’s network. This approach most fairly balances the needs and priorities of CMRS carriers of all sizes and strikes an appropriate balance between the public interest need to ensure consumer access to roaming and the ability of carriers to make appropriate business decisions in a competitive market.

2. “All Mobile Wireless Services”

In light of both current market conditions and the way the wireless market is expected to develop, automatic roaming should be available for all mobile wireless services, not just for basic voice service.

As previously discussed in these comments, commercial mobile radio services consist of far more than just basic interconnected voice – a fact that the Commission itself has

acknowledged on more than one occasion.⁶⁶ Data, PTT, and other wireless services have become an increasingly important component of the CMRS market and are now provided by many CMRS carriers. These services are predominantly provided in conjunction with basic voice as part of a bundle of services (the provision of these services on a stand-alone basis is becoming increasingly rare), and their use and economic impact are becoming increasingly significant.⁶⁷ As demonstrated throughout these comments, the needs and interests of consumers – including public safety, government, and public service subscribers – can only be met if automatic roaming is made available for all wireless services that a carrier provides.

3. Reasonable and Nondiscriminatory Rates, Terms, and Conditions

The requirement that automatic roaming be made available at reasonable and nondiscriminatory rates and on reasonable and nondiscriminatory terms and conditions is essential to ensuring that such services will actually be available to consumers. At the same time, this standard would not impose any additional burden on carriers, but it would serve to facilitate good faith commercial negotiations between carriers regarding roaming.

As described in Section VI of these comments, a simple and straightforward method for determining whether a carrier's roaming rates are reasonable for purposes of this rule would be to compare these rates to the same carrier's lowest prevailing retail rates. Specifically, if a carrier charges roaming rates that exceed the lowest prevailing retail rates that it charges its own subscribers, these roaming rates would be considered presumptively unreasonable.

⁶⁶ / See, e.g., *Sprint Nextel Merger Order* at ¶ 42 (citing the *Cingular Merger Order*) (“First, we continue to believe, consistent with the *Cingular-AT&T Wireless Order*, that most mobile data services likely are sold as add-ons to mobile voice services rather than as separate data-only service offerings. Therefore, we believe that nearly all mobile data subscribers are also mobile voice subscribers using the same phone number. Second, a variety of these mobile data add-ons are offered by all nationwide carriers and some smaller regional carriers.”).

⁶⁷ / See, e.g., Ovum Report (discussed in Section IV.E.2. of these comments).

Using the process recommended in the McAfee Report (and described in detail in Section VI.A. of these comments), the Commission, as well as carriers themselves, would be able to make the necessary comparison using publicly available retail price information and without needing to engage in any complex cost analysis or studies. This approach is fair, economically sound, minimally intrusive, and would be easy to administer. This approach also allows carriers to recognize a healthy return on roaming that would allow them to recover any implementation costs they may incur as well as a reasonable profit, while also acting as a check on a carrier's ability to unfairly exercise market power.

Similarly, there are certain roaming practices that are implicitly unreasonable and/or discriminatory, such as territorial exclusions on where roaming will be allowed on its network, restrictions on the type or scope of services for which roaming is available, or outright refusals to provide any roaming service whatsoever. The existence of such practices presumptively demonstrate that a carrier's roaming terms and conditions are unjust, unreasonable, or discriminatory and should therefore result in a threshold finding that they violate the automatic roaming rule.

B. Streamlining of the Section 201/202 Complaint Process

As the Commission discussed in the *NPRM*,⁶⁸ existing law provides a means for addressing carrier-specific roaming issues through Sections 201, 202, and 208 of the Communications Act, and the principles underlying the statutory mandates of Sections 201 and 202 remain highly relevant to the wireless market, especially with regard to roaming.

SouthernLINC Wireless believes that, in addition to adopting an automatic roaming rule, the Commission needs to revise and streamline its procedures for addressing complaints

⁶⁸ / *NPRM* at ¶ 34.

regarding unreasonable and discriminatory roaming practices and behavior in violation of Sections 201 and 202 of the Communications Act. Such a revised complaint process would both supplement and support the automatic roaming rule discussed above, providing the Commission with sufficient flexibility to develop an appropriate remedy in a given case, depending on whether the issue at hand is specific to a particular carrier-to-carrier relationship, specific to a particular carrier's roaming practices in general, or symptomatic of a more widespread problem in the wireless sector itself.

SouthernLINC Wireless recommends the following revisions to the Section 201/202 complaint process:

- The adoption of an evidentiary presumption in roaming cases that automatic roaming is in the public interest and (as set forth in the automatic roaming rule) must therefore be made available on a reasonable and nondiscriminatory basis;
- The adoption of appropriate evidentiary presumptions regarding the reasonableness of roaming rates, terms, and conditions (*e.g.*, wholesale rates that exceed retail rates are presumed to be unreasonable);
- The adoption of an evidentiary presumption that automatic roaming should be available for all mobile wireless services, including voice, data, PTT, etc.; and
- Automatic placement of all roaming complaints on the Enforcement Bureau's Accelerated Docket in order to provide for a sufficiently timely resolution of the complaint.

The essential purpose of these presumptions is to expedite the complaint process in a way that recognizes the important public interest in the availability of automatic roaming for all mobile wireless services, while also recognizing that there may be circumstances when the provision of such services is either not possible or unduly burdensome. Therefore, these presumptions – all of which are, of course, rebuttable – are based on carriers' obligations as set forth in the proposed automatic roaming rule described above.

Under the first presumption – that automatic roaming is in the public interest and must be made available on a reasonable and nondiscriminatory basis – a potential petitioner would be required to show that a technologically compatible carrier is refusing to provide automatic roaming services to the petitioner’s customers on a reasonable and nondiscriminatory basis or is refusing to provide automatic roaming altogether. Carriers using the same or backwards-compatible air interfaces would be presumed to be technologically compatible, and technological compatibility would be further presumed where the respondent carrier has refused to enter into good faith negotiations regarding technical issues.

Under the next set of presumptions, a showing that meets the same reasonableness standard as described previously in these comments – *i.e.*, that the carrier’s roaming rates exceed its lowest prevailing retail rates – would be considered *prima facie* evidence that these roaming rates are unreasonable. Terms and conditions that are more restrictive or more burdensome than those imposed on other carriers that receive roaming services from the respondent would also be presumed to be unreasonable and discriminatory.

As discussed previously these comments, commercial mobile radio services encompass not just voice, but also a broad range of other services, such as data and PTT, that are becoming an ever-increasingly important component of the CMRS market. The needs and interests of consumers can only be met if automatic roaming is available for all wireless services. Therefore, the Commission should presume that automatic roaming is available for any wireless service that a carrier offers to the public unless the respondent carrier can demonstrate in a specific case why a certain service cannot be made available to a specific requesting carrier.

Finally, the Commission should adopt procedures whereby all formal complaints involving roaming are automatically placed on the Enforcement Bureau’s Accelerated Docket

under Section 1.730 of the Commission's Rules.⁶⁹ This would provide carriers experiencing problems in obtaining automatic roaming with a remedy that is sufficiently timely in light of the fast-moving CMRS market and minimize any harm to wireless consumers that may be caused by a carrier's roaming practices.

C. Adoption of Appropriate Enforcement Measures

As the Commission is well aware, any rules, policies, and processes are effective only if there is an adequate means of enforcing them, including penalties for violations. Therefore, in conjunction with the proposals set forth above, SouthernLINC Wireless urges the Commission to adopt appropriate enforcement measures that will serve to promote the availability of roaming for U.S. consumers and to discourage carrier behavior that unreasonably diminishes or constrains such access or otherwise harms consumers of wireless services.

SouthernLINC Wireless believes that the Commission should adopt procedures by which it could issue specific orders compelling carriers to conduct good faith negotiations for reasonable and nondiscriminatory roaming agreements. The Commission already has the authority to issue such orders under its obligations to enforce the provisions of the Communications Act, particularly the access and nondiscrimination provisions of Sections 201 and 202, and such orders would be the most efficient and effective means of enforcing roaming access, as well as the most efficient use of Commission resources.

Of course, not all roaming issues may be addressable through good faith negotiations, and situations may arise where, even with an order to compel in place, a carrier still refuses to either enter into or to conduct negotiations in good faith. Such situations may require direct Commission intervention, such as ordering negotiations to take place subject to Commission

⁶⁹ / 47 C.F.R. § 1.730.

oversight. Although this approach is a rather drastic measure that one hopes that would rarely, if ever, have to be invoked, it is nevertheless necessary that the Commission at least have this option available to it.

The Commission should also adopt appropriate forfeitures for carrier actions and practices that inhibit or diminish consumer access to roaming, including (but not limited to) unreasonable roaming rates, terms, or conditions, or the denial of roaming access altogether. Although such forfeitures would be subject to the provisions set forth in Section 1.80(b) of the Commission's Rules,⁷⁰ these forfeiture amounts must also be sufficiently calculated and levied in such a way, such as accrual on a per-customer/per-day basis, that carriers cannot simply absorb these forfeitures as a cost of doing business. Carriers who are injured by another carrier's illegal roaming practices should also have the right to seek and obtain appropriate damages, further ensuring that the costs will outweigh any benefits that a carrier might recognize by engaging in unjust and unreasonable roaming practices.

Finally, if the Commission finds that the complained-of roaming practices have an anti-competitive intent or purpose, the total amount of any forfeiture or damages should be trebled. This level of punitive action would serve as an appropriate deterrent to practices that diminish or inhibit consumer access to roaming or otherwise harm wireless consumers.

X. CONCLUSION

The Commission has thus far taken the position that roaming issues are, in general, being sufficiently addressed by competitive market forces. However, the Commission has received numerous comments and submissions in various proceedings clearly indicating that this is not the case, and it has certainly not been SouthernLINC Wireless' experience. As discussed above,

⁷⁰ / 47 C.F.R. § 1.80(b).

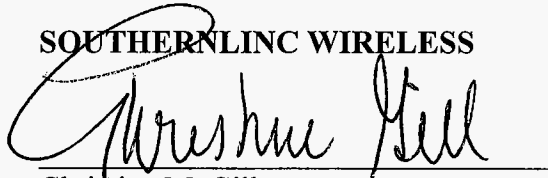
Sprint Nextel and Nextel Partners – the only domestic carriers with whom SouthernLINC Wireless is able to roam – have consistently and repeatedly engaged in unreasonable roaming practices to the detriment of wireless consumers, particularly those who rely on the unique services and capabilities that can only be found on iDEN networks. As the Commission looks at competition in the CMRS market, it should be aware that there is already market failure for iDEN roaming and that serious questions remain regarding the availability of roaming for other platforms and services in the United States.

SouthernLINC Wireless urges the Commission to take immediate action to address these problems and to adopt the proposals set forth in these comments to ensure the development and availability of automatic roaming and to ensure that all U.S. consumers have equal access to mobile wireless services. SouthernLINC Wireless submits that these proposals strike an appropriate balance between the public interest need in the availability of automatic roaming for all mobile wireless services while still providing carriers ample flexibility to make appropriate business decisions in a competitive market.

WHEREFORE, THE PREMISES CONSIDERED, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

SOUTHERNLINC WIRELESS

A handwritten signature in black ink, appearing to read "Christine M. Gill", is written over a horizontal line.

Christine M. Gill
David D. Rines
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
T: 202.756.8000
F: 202.756.8087

Michael D. Rosenthal
Director of Legal and External Affairs
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Its Attorneys

Holly Henderson
External Affairs Manager
SouthernLINC Wireless
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342
T: 687.443.1500

Dated: November 28, 2005

CERTIFICATE OF SERVICE

I, Merline Wilkins, do hereby certify that on this 28th day of November, 2005, a copy of the foregoing comments of SouthernLINC Wireless in the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket no. 05-265, was submitted electronically to the Federal Communications Commission and served via electronic mail upon the following:

Chairman Kevin J. Martin
Federal Communications Commission
445th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

With Electronic Courtesy copies to:

Elias Johnson
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kim Won
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

/s/ Merline Wilkins
Merline Wilkins